

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,	:	CIVIL NO. 1:00-CV-1449
	:	
Plaintiff	:	(Judge Caldwell)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
ROBERT S. GOLDRING,	:	
	:	
Defendant	:	

ORDER

The plaintiff commenced this *Bivens*¹ action by filing a complaint on August 14, 2000. By an Order dated April 10, 2001, the defendants' motion to dismiss was granted and the complaint was dismissed on the basis that the plaintiff failed to exhaust available administrative remedies prior to commencing this action.

The plaintiff appealed the dismissal of his complaint to the United States Court of Appeals for the Third Circuit. The Third Circuit concluded that there were factual disputes concerning whether the plaintiff exhausted administrative remedies. The Third Circuit reversed the dismissal of the plaintiff's access to the courts claim against defendant

¹See *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Goldring. The Third Circuit affirmed on other grounds the dismissal of the claims against the other defendants.

On January 20, 2004, the defendant filed a motion for an evidentiary hearing and a brief in support of that motion. The defendant requested that the court conduct an evidentiary hearing, as directed by the Third Circuit, to resolve the factual disputes regarding whether or not the plaintiff exhausted available administrative remedies. A hearing was held on April 13, 2004. By an Order dated April 15, 2004, the parties were ordered to file proposed findings of fact and conclusions of law on or before April 30, 2004.

On April 26, 2004, the plaintiff filed a motion for the court to provide him a copy of the transcript of the April 13, 2004 hearing free of charge and a brief in support of that motion.

28 U.S.C. § 1915 permits the waiver of prepayment of fees for *in forma pauperis* litigants and allows for the payment by the United States of the cost of preparing a transcript in certain instances. 28 U.S.C. § 1915(c) provides:

Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceeding conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

This case is not on appeal, thus subsections (1) and (3) of § 1915(c) do not provide authorization for a free transcript. Although this case is before the undersigned pursuant to 28 U.S.C. § 636(b), subsection (2) of § 1915(c) does not apply in this case because the transcript is not required by the district court. Accordingly, the plaintiff's motion for a free transcript of the April 13, 2004 hearing will be denied.

We have checked with Wesley Armstrong, the court reporter at the hearing, and have been informed that, based

upon an inquiry of the plaintiff directly after the hearing, an invoice was sent to the plaintiff for \$84.66 for purchase of the transcript. The plaintiff can obtain the transcript by paying that amount to the court reporter.

IT IS ORDERED that the plaintiff's motion (doc. 115) for a free transcript of the April 13, 2004 hearing is **DENIED**.

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: April 28, 2004.